

91-322

The Secretary of State presents his compliments to Their Excellencies and Messieurs and Mesdames the Chiefs of Mission and has the honor to refer to the matter of employment in the United States and of motor vehicles bearing official Department of State license plates being used incidental to certain commercial endeavors. In particular, the Department refers to vehicle use for commercial purposes to provide home delivery of various items including prepared foods and newspapers.

There are several factors which come into play in addressing this issue but foremost among them is the general prohibition on commercial activity or employment by persons admitted to the United States for the purpose of performing diplomatic or consular functions. In the case of diplomatic agents, Article 42 of the Vienna Convention on Diplomatic Relations prohibits practice in the receiving State of "any professional or commercial activity" for personal profit. The same holds true for career consular officers pursuant to Article 57 of the Vienna Convention on Consular Relations. Additionally, such activity by diplomatic agents, members of the administrative and technical staff of diplomatic missions, consular officers and employees, or any other individuals

who have been admitted to the United States as principal aliens on diplomatic ("A") visas is in violation of the visa status of such individual and thus prohibited by the immigration laws of the United States. The Department drew these rules to the attention of the missions in circular notes dated June 18 and August 8, 1986. The Department holds missions responsible for ensuring that their personnel do not violate these rules.

It should be emphasized that, should such persons nonetheless violate the applicable law and engage in commercial or professional activity for profit in the United States, notwithstanding the consequences for such persons, certain provisions automatically accrue to the benefit of the United States and its public.

Specifically, such persons would not enjoy, in connection with civil actions related to the employment, any otherwise available immunity from the civil jurisdiction of the courts of the United States. Additionally, such persons would be liable for the payment of income taxes on the income resulting from such activity or employment.

A different situation exists with respect to the dependents of the classes of persons specified above. While as a general rule these dependents enjoy no right under international law to be commercially employed in the host State, and they too are in the first instance prohibited by U.S. immigration laws from such employment in the United States, U.S. law permits dependent employment (country-by-country) on the basis of reciprocity and in accordance with procedures prescribed by the Department of State and the U.S. Immigration and Naturalization Service. This program was explained to the missions in some detail in circular notes dated April 10, 1991, and July 10, 1985, which transmitted applicable regulations of the Immigration and Naturalization Service

and the current listing of the countries with which the United States has reciprocal arrangements.

Under the dependent employment program, the dependents of ninety-two States are permitted to engage in employment in the United States. All such employed dependents would, however, as a consequence of taking up such employment, lose their civil immunity and exemption from income taxation in connection with such employment under international law (Articles 31(1)(C) and 34(D) of the Vienna Convention on Diplomatic Relations and, in some cases, as a consequence of express provisions in bilateral agreements).

The issue of the permissible commercial use of vehicles bearing the distinctive red, white and blue license plates issued by the Department of State (sometimes popularly referred to as "diplomatic plates") only arises in connection with the relatively small class of dependents identified in the preceding paragraph. Chiefs of diplomatic or consular missions may themselves decline to permit the dependents of their personnel to use official-plated vehicles for a public and recognizable commercial purpose. From the Department's point of view, use of a personal automobile bearing Department of State license plates is permissible incidental to a dependent taking up employment under the reciprocity-based employment program. The drivers of such vehicles are susceptible to civil suit for damages which are found to be caused by acts related to the employment. The Department requires all personal vehicles owned by members of diplomatic or consular missions to bear only the license plates issued by the Department, and further requires all such vehicles to be covered by third-party

liability insurance in the amount of \$100,000 per person, \$300,000 per accident and \$100,000 property damage or combined single limit of \$300,000.

The Department would like to take this opportunity to remind the Chiefs of Mission that it holds them responsible to ensure that all vehicles operated by the missions or their members are at all times covered by liability insurance equal to or exceeding the amounts specified by the Department of State. It should be noted in this connection that an individual is generally required by the insurer to give notice of any intended use of an insured vehicle for purposes other than those generally associated with passenger use of the vehicle.

Department of State,
Washington, NOV 8 1991

A handwritten signature in dark ink, consisting of several loops and a long horizontal stroke, positioned to the right of the typed text.